IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 58 OF 2003

Vasudeo Raut,
aged about 45 years,
son of Narayan Raut,
Occupation service,
residing at House No.244,
Near Nitin Bar, Headland,
Sada, Mormugao-Goa,
presently lodged in
Sada Sub Jail,
Sada, Vasco-da-Gama, Goa. ... Petitioner.

VERSUS

S T A T E,
through Public Prosecutor,
High Court of Bombay at Panaji,
Goa. ... Respondent.

Mr. A.P. Lawande, Advocate for the Petitioner.

Mr. S.N. Sardessai, Public Prosecutor for the State/ Respondent.

CORAM: P.V. HARDAS, J.

DATE: 5TH FEBRUARY, 2004.

ORAL JUDGMENT:

This Criminal Revision Application at the behest of the original accused, assails the judgment of the learned Third Assistant Sessions Judge at Margao, dated 13th October, 2003 in Criminal Appeal No.34/2003 dismissing the appeal filed by the Petitioner/accused and confirming the conviction and sentence passed by the Judicial Magistrate First Class, Vasco-da-Gama by Judgment dated 20th June, 2003 in Criminal Case No.95/S/2000/C.

2. The facts in brief as are necessary for the decision of this Criminal Revision Application are stated hereunder :-

On 2.3.2000 P.W.13 P.I. Francis Corte recorded the complaint of P.W.1 Surekha Terekholkar at Exh.PW.1/A. The said complaint was against the accused and it was alleged that the accused had thrown acid on the face of her son P.W.5 Venkatesh and some acid had also fallen on her person. P.W.1 Surekha and P.W.5 Venkatesh were then referred for medical examination in Chicalim Hospital. They were examined by P.W.8 Dr. Vallab Nadkarni. On examination, he found that P.W.5 Venkatesh had superficial burns 5 x 2 cms on the right lumbar area caused by acid and extensive burns on the right side of the face till the neck and burns 3 x 3 cms. on the right knee posteriorily. The medical certificate of P.W.5 Venkatesh is at Exh.PW.8/A. In respect of P.W.1 Surekha, P.W.8 Dr. Nadkarni noticed a bruise 4 x 2 cms. on the left chest and abrasion 3 x 2 cms. below the knee. The medical certificate of P.W.1 Surekha is at Exh.PW.8/B. P.W.13 P.I. Corte then drew the scene of the offence panchanama in the presence of P.W.4 Ulhas Lawande. The scene of the offence panchanama is at Exh.PW4/A. The accused was arrested on the same day vide arrest panchanama at

Exh.PW3/A in the presence of P.W.3 Shivram Theli. Pieces of broken glass container, a plastic bottle containing liquid and a short pant having burn t marks
came to be recovered at the instance of the accused. Meanwhile, P.W.5 Venkatesh was admitted in the Goa Medical College and was examined on 2.3.2000 by P.W.6 Dr. Pradip Naik. The certificate is at Exh.PW.6/A. Further to the completion of the investigation, a charge-sheet against the petitioner/accused came to be filed by P.W.11 P.S.I. Ajit Naik.

3. The learned Judicial Magistrate, First Class vide Exh.7 framed a charge against the accused/petitioner for offences punishable under Section 326 of the Indian Penal Code. The accused denied his guilt and claimed to be tried.

4. The prosecution, in support of its case examined 14 witnesses. The learned J.M.F.C., on consideration of the evidence adduced by the prosecution, convicted and sentenced the petitioner/accused for an offence under Section 323 of I.P.C. to undergo S.I. for one month and to pay compensation of Rs.500/- and Imprisonment for two and half years and compensation of Rs.3000/- for an offence under Section 326 of I.P.C. On appeal being

carried, the learned appellate Court, by the judgment impugned in the present revision, dismissed the appeal.

5. Mr. A.P. Lawande, learned counsel appearing on behalf of the petitioner, has urged two grounds before me. Firstly it is contended that the learned Assistant Sessions Judge, who had decided the appeal, was incompetent to hear and decide the appeal and therefore the judgment is vitiated. Secondly, it is urged before me that there was absolutely no evidence that P.W.5 Venkatesh was either in severe bodily pain or unable to follow his ordinary pursuits and therefore his conviction under Section 326 was not justified.

6. Mr. Sardessai, learned P.P. has supported the judgments of the two courts below and has submitted that the judgments need no interference.

7. In respect of the first submission, it is useful to make a reference to Section 381 Cr.P.C. Sub-section (1) of Section 381 states that subject to the provisions of sub-section (2) an appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge. The proviso to sub-section (1) provides that

in case an appeal is filed assailing the conviction passed by a Magistrate of the second class may be heard and disposed of by an Assistant Sessions Judge or a Chief Judicial Magistrate. Sub-section (2) of Section 381 provides that an Additional Sessions Judge, Assistant Sessions Judge or a Chief Judicial Magistrate shall hear only such appeals as the Sessions Judge of the division may, by general or special order, make over to him or as the High Court may, by special order, direct him to hear.

8. In the present case, the appeal has been made over to the Assistant Sessions Judge by an Order of the Sessions Judge which is reflected in the roznama. Obviously, this ground regarding jurisdiction was not raised before the learned Assistant Sessions Judge and it is being raised for the first time in this Criminal Revision Application. The petitioner had submitted to jurisdiction of the learned Assistant Sessions Judge hearing the appeal. It is also not claimed before me that any prejudice has been caused to the applicant/accused by the learned Assistant Sessions Judge hearing the appeal. In any event, the Assistant Sessions Judge vide Section 381 Cr.P.C., was competent to hear the appeal assigned to it.

9. In respect of the second submission, a

reference may usefully be made to the evidence of P.W.6 Dr. Pradip Naik. According to the evidence of P.W.6 Pradip Naik, P.W.5 Venkatesh had received treatment from 2.3.2000 to 28.3.2000 and was later transferred to Surgery ward for management of face burns. The certificate issued by P.W.6 Dr. Naik is at PW.6/A. The said certificate also refers to the fact that medical/surgical treatment was given to P.W.5 from 2.3.2000 to 28.3.2000 and P.W.5 was later on transferred to the surgery ward for management of facial burns. The evidence of P.W.6 has gone virtually unchallenged in the sense that no material has been brought out in the cross-examination to discredit what this witness has stated. P.W.5 Venkatesh in his evidence has also stated that he was admitted for two months in the Goa Medical College, Bambolim. Since P.W.5 Venkatesh was admitted in the Goa Medical College for a period of two months, it necessarily follows that he was unable to follow his ordinary pursuits. Admittedly during the period from 2.3.2000 till 28.3.2000 P.W.5 Venkatesh was taking medical treatment on account of the injuries sustained by him. Till he was discharged from the Department of Ophthalmology, he was taking treatment and was an in-door patient. In view of this, and particularly in the absence of any challenge in the cross examination, it has to be held that P.W.5

Venkatesh on account of the injuries, was unable to follow his ordinary pursuits. Thus, according to me, there is no substance in the contention on behalf of the petitioner that there is no evidence to suggest and particularly that of P.W.5 Venkatesh that for a period of 20 days he was unable to follow his ordinary pursuits.

10. The two Courts below have concurrently held that the offence against the petitioner/accused is proved. The accused is alleged to have thrown acid on the face of P.W.5. The acid had caused chemical burns on the right side of the face and resultant damage to the right eye. The vision of P.W.5 was affected and even on his discharge from the Ophthalmology Department, his vision was not restored fully. In such circumstances, according to me, the sentence of imprisonment and the compensation awarded by the learned Trial Court need no interference.

11. In the result, therefore, Criminal Revision Application No.58/2003 is dismissed. Bail Bond stands cancelled. The petitioner to surrender within four weeks from today.

P.V. HARDAS, J.

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